REMARKS

This Amendment is made in response to the Office Action dated October 5, 2007. In the Office Action:

1. Claim 5 was objected to; and

2. Claims 1-32 were rejected under 35 USC §102.

By this Amendment, claim 5 is amended. Currently pending claims 1-32 are believed allowable, with claims 1, 13 and 21 being independent claims.

CLAIM OBJECTIONS

Claim 5 was objected to for missing a period at the end of the claim. Office Action, page 2. By this amendment, the missing period is added. The Examiner is thanked for pointing out this typographical error.

CLAIM REJECTIONS UNDER 35 USC §102

Claims 1-32 were rejected under 35 USC §102(b) as allegedly anticipated by U.S. Patent Document No. 2003/0005028 (Dritschler). Office Action, page 2.

It is well settled that the Examiner has the burden of making out a *prima facie* case of anticipation in the first instance by pointing out where each and every element of the claimed invention, arranged as required by the claim, is described identically in the reference, either expressly or under the principles of inherency. See generally, In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990); In re King, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986); Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick Co., 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984).

Claim 1

Claim 1 recites, in part, "distributing application workload among the application instances using a decentralized workload management layer based on the quality of service metrics." In rejecting claim 1, the Office Action argues such a disclosure is found in the Abstract and paragraphs [0028] and [0029] of Dritschler. Office Action, page 3. The Applicants respectfully disagree with the Examiner's interpretation of Dritschler.

The Abstract of Dritschler states,

> The invention relates to the control of servers which process client work requests in a computer system on the basis of resource consumption. Each server contains multiple server instances (also called "execution units") which execute different client work requests in parallel. A workload manager determines the total number of server containers and server instances in order to achieve the goals of the work requests. The number of server instances started in each server container depends on the resource consumption of the server instances in each container and on the resource constraints, service goals and service goal achievements of the work units to be executed. At predetermined intervals during the execution of the work units the server instances are sampled to check whether they are active or inactive. Dependent on the number of active server instances the number of server address spaces and server instances is repeatedly adjusted to achieve an improved utilization of the available virtual storage and an optimization of the system performance in the execution of the application programs. Dritschler, Abstract (emphasis added).

It is clear from a reading of Dritschler's abstract that a centralized workload manager controls the total number of server containers and server instances in order to achieve the goals of the work requests. By contrast, claim 1 recites distributing application workload among the application instances using a decentralized workload management layer.

The term "decentralized" means "1. to distribute the administrative powers or functions of (a central authority) over a less concentrated area . . . 2. to disperse (something) from an area of concentration." Random House Unabridged Dictionary (2006), see http://dictionary.reference.com/browse/decentralized. By contrast, Dritschler teaches using a single workload manager in a centralized manner to determine the total number of server containers and server instances in order to achieve the goals of the work requests.

Thus, the Applicants respectfully submit:

1) Dritschler contains no teaching of decentralized workload management since a centralized workload manager determines the total number of server containers and server instances in order to achieve the goals of the work requests; and

2) Dritschler does not teach a layer of decentralized workload management because there is only one centralized workload manager controlling server instances.

For these grounds, Dritschler clearly does not disclose the claim limitation of "distributing application workload among the application instances using a decentralized workload management layer based on the quality of service metrics."

Turning of the other passages cited in the Office Action, paragraph [0028] of Dritschler states,

> A workload manager 102, which is a component of the operating system 101, provides operating system services for a work manager 130 to define one or more work queues 132 which represent the workload to be executed. The work manager 130 receives work requests 131 through a data transmission facility 120 from outside the computer system 100. The work manager 130 transfers the work requests 131 to the workload manager 102 on behalf of application programs herein also called clients. A work queue 132 is created for all work requests 131 of the same type. The administrator of the operating system 101 classifies work requests 131 to service classes and determines for this purpose the type of the work requests 131. The service classes correspond to service goals based on performance criteria. The service classes have a hierarchical relationship to one another. Service classes at the upper level contain work requests with strict performance criteria such as short execution time. In addition, the work queues have assigned importance levels which reflect their importance in relation to other work queues. For example, time-critical applications have a higher importance level than archive updating applications. Dritschler, paragraph [0028] (emphasis added).

The Applicants respectfully submit that Dritschler fails to provide a teaching of distributing application workload among the application instances using a decentralized workload management layer. The workload manager discussed in Dritschler is centralized and teaches away from the present invention.

Paragraph [0029] of Dritschler states,

> The workload manager 102 initially starts one or more server instances 134 of a plurality of

> possible server instances to service work requests 131 which are included in a work queue 132. The workload manager 102 uses server definitions which are stored with its performance goals in a shared data facility 110 to start a server address space 133 which is herein also called a server container. There may be a plurality of server address spaces 133 active at a certain point of time. The address space 133 started by the workload manager 102 contains one or more server instances 134 which may also be called server tasks, server threads or execution units. A server instance 134 obtains a work request 131 from a work queue 132, processes the request 131 and checks the work queue 132 for the next request 131, and repeats these steps until the workload manager 102 tells the server instances to terminate. Dritschler, paragraph [0029].

The cited passage above discusses the operations of the workload manager in Dritschler, but again fails to provide a teaching of distributing application workload among the application instances using a decentralized workload management layer. The workload manager discussed in Dritschler is centralized and teaches away from the present invention.

For at least these reasons, it is respectfully submitted that Dritschler fails to anticipate the limitations of claim 1. Thus, claim 1 is believed allowable and indication of such allowance is earnestly requested.

Claims 2-12

Claims 2-12 are dependent on and further limit claim 1. Since claim 1 is believed allowable, claims 2-12 are also believed allowable for at least the same reasons as claim 1.

Claim 13

Claim 13 was rejected under 35 USC §102(b) for the same reasons as claim 1. Office Action, page 5. Since claim 1 is believed allowable for the reasons provided above, claim 13 is also believed allowable for at least the same reasons as claim 1.

Claims 14-20

Claims 14-20 are dependent on and further limit claim 1. Since claim 1 is believed allowable, claims 14-20 are also believed allowable for at least the same reasons as claim 1.

Claims 21-31

Claims 21-31 were rejected under 35 USC §102(b) for the same reasons as claims 1-12. Office Action, page 6. Since claims 1-12 are believed allowable for the reasons provided above, claims 21-31 are also believed allowable for at least the same reasons as claims 1-12.

CONCLUSION

In view of the forgoing remarks, it is respectfully submitted that this case is now in condition for allowance and such action is respectfully requested. If any points remain at issue that the Examiner feels could best be resolved by a telephone interview, the Examiner is urged to contact the attorney below.

No fee is believed due with this Amendment, however, should a fee be required please charge Deposit Account 50-0510. Should any extensions of time be required, please consider this a petition thereof and charge Deposit Account 50-0510 the required fee.

Respectfully submitted,

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